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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Regarding: Charles O. Townley Election with Amendment
Serial No. 10/758,455
Filing Date 01/15/2004
Docket No. THUMB-604DIV
For MODULAR BASAL THUMB JOINT IMPLANT

Attention: Group Art Unit 3738
Examiner Brian E. Pellegrino

Commissioner for Patents, Alexandria, VA 22313-1450:

I certify that this correspondence is facsimile-transmitted to the Patent and Trademark Office (571 273 8300) on 6 NOV 2006:

Christopher John Rudy: Christopher John Rudy 11/6/2006.

Thank you for the 10/12/2006 Office action for the present application. In reply to that action, please enter the instant amendment, and reconsider and withdraw the election/restrictions.

CLAIMS AMENDMENTS are attached. With claims 21-42 present, the fee of \$25.00 for claim 42 is enclosed (PTO-2038). Without entry of new matter, this amendment more particularly points out and distinctly claims the invention, and is fully supported by the original and underlying specifications, including drawings. Claim 42 requires including for bone interface a porous coating, and no art is believed to anticipate this new claim. Previously filed remarks directed to claims 40 and 41 referenced claims "41 and 42" by mistake; please accept my apology for any confusion.

The Applicant elects, with traverse, Species B (FIGS. 4-9). All present claims read on the election since Species B is a modular joint, and all claims require that modularity. Although new claim 42 requires a porous coating (Species C), it depends on claim 40, which is generic to that subject matter. Also, Species B can include features from Species A, C and D, which is fully set forth in the underlying specification, as long as modularity is preserved, and thus the all claims are generic to these other species with their features. Moreover, in the long prosecution of the parent application (g.y.), no such species requirements were set forth as done here. Thus, for example, a claim for porous coating is found on appeal in the parent. Finally, the reasoning set forth in the outstanding action is unrealistic. Species B would not be implanted separately, and Species C could indeed meet with surgical cement, say, on a tip portion of its stem, and still engender bone ingrowth. The profile difference of Species D is small, not enough to be of concern in the parent.

Respectfully submitted,

Dated: Nov. 6, 2006 A.D.

Attmt/encl

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